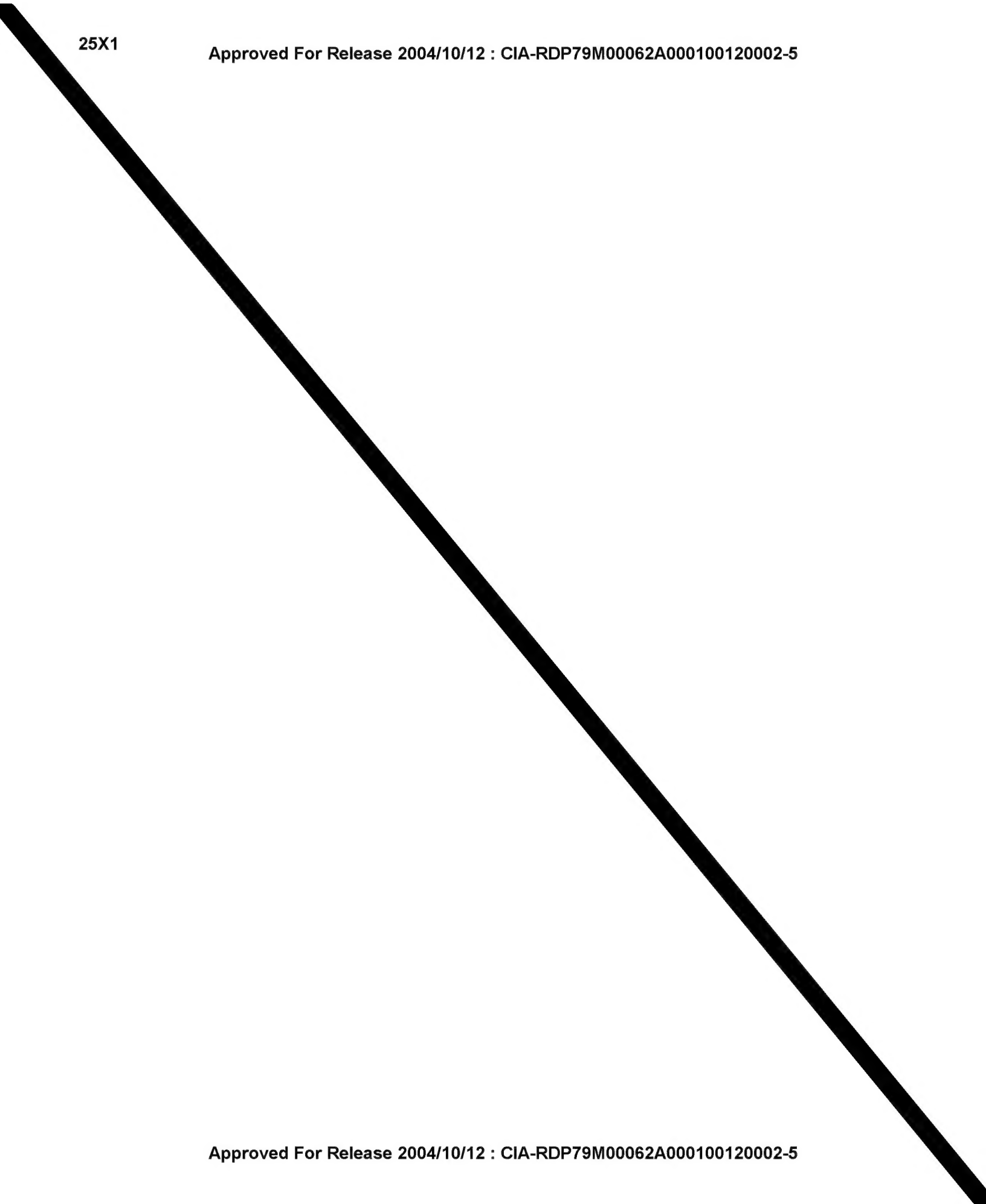

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SENATE RESOLUTION 400

SUBSTITUTE TO BE OFFERED BY

SENATOR CANNON FOR A NUMBER

OF INFLUENTIAL SENATORS

Title of Committee:	Select Committee on Intelligence Activities
Membership:	Total of 19
	2 Senators (1 majority, 1 minority) from each of Appropriations, Armed Services, Foreign Relations and Judiciary Committees
	9 Senators appointed at large (5 majority, 4 minority)
	Majority and minority leaders are ex-officio members
Individual Term:	Nine years continuous service
Jurisdiction:	CIA and DCI
	All other Government intelligence activities, including those of DoD, State, Justice and Treasury
Authority:	Legislative
	Budgetary Authorization
	General Oversight
Exclusive Jurisdiction:	Exclusive legislative jurisdiction of CIA and DCI
	Shared legislative jurisdiction of other intelligence activities (other committees can request a 30-day referral)
	Exclusive budgetary authorization jurisdiction of all Government intelligence activities

Disclosure to Public:	Committee may disclose any information in its possession provided the President does not object within 5 days. If the President objects, a majority of the Committee may refer the issue to the full Senate.
Unauthorized Disclosures:	No classified information in possession of the Select Committee concerning lawful intelligence activities shall be disclosed to any person except in accordance with committee procedures or in a closed session of the Senate. It is the duty of the Select Committee on Standards and Conduct to investigate any alleged disclosure of intelligence information.

KEY INTELLIGENCE OVERSIGHT ISSUES

Beyond what the Senate believes is important in restructuring oversight with respect to the DCI/CIA and the foreign intelligence community, we believe that there are two vitally important issues bearing directly upon the continuing success of the Nation's foreign intelligence effort. They concern enhancing the probability of protecting those truly vital secrets involving operational details and sources and methods used in foreign intelligence and the management of the Nation's foreign intelligence effort as an integrated whole from the perspective of direction within the Executive Branch and oversight within the Congress. The lead proposal raises serious questions with regard to both of these concerns.

Proliferation of Sensitive Information

a. The resolution does not provide for the exclusivity or concentration of oversight which would assure that exposure to such sensitive matters would be limited to the minimum number of members or committees who should be able to exercise effective oversight. The proposal actually grants the committee exclusive oversight only in the areas of proposed legislation, including authorization, which affects the CIA and the DCI. (Even in authorization the Senate Budget Committee is involved. Section 4(c).) Under Section 3(c) any other committee may assert its right of access to the most sensitive operational details and sources and methods if it directly relates to any other matter within that committee's jurisdiction. This is precisely the grounds on which 11 committees in this Congress have asserted their right of access to sensitive matters. In addition, for other elements of the intelligence community, the proposed committee only exercises concurrent jurisdiction and these elements are often inextricably involved in some of the most sensitive aspects of intelligence operations, sources and methods. Thus, the committes exercising this concurrent jurisdiction will be likewise exposed to these matters.

b. Moreover, the Committee itself having 19 members and an objective of turning over one-third of the membership every two years in the near future, together with unplanned vacancies will result in service on the committee and exposure to these especially sensitive matters for about one-third of the Senate within a relatively few years.

c. The specific public annual authorization requirement which appears to be imposed by Section 3(a)(4) read in conjunction with Section 12 will provide our foreign adversaries with valuable insight into the nature of those sensitive aspects of the Nation's foreign intelligence budgets which presently are not publicly disclosed. This will occur particularly with respect to analysis by them of year to year fluctuations and of the legislative processing of the authorization bill and the appropriations bill which will logically follow. The inevitable process of informed committee reports and enlightened debate in both Houses on original bills and conference reports increases the likelihood of proliferation of sensitive information to an untold level. The President has already expressed his concern on a one-time publication of the intelligence community budget. Directors of Central Intelligence who are charged with the responsibility to protect intelligence sources and methods from unauthorized disclosure by law have protested such action. Finally, both Houses of Congress have recently voted down propositions requiring public disclosure. Alternative means are available for legislative oversight bodies to influence the size and content of intelligence programs without comprising their secrecy. Also, there is the question whether a Senate resolution can bind the House of Representatives to an authorization requirement in light of the existing permanent authorization in Section 8 of the CIA Act of 1949. Unless the House acts on the authorization bill, it is assumed it would be out of order for the Senate to act on appropriations for CIA, for example.

d. While Section 4(b) recognizes indirectly that the names of individuals engaged in intelligence activities for the United States or the sources of information should be protected from public disclosure there is no mention of the equally sensitive matter of intelligence "methods".

e. Section 8 of the Resolution which is not even proposed as a change in the Senate Rules vests in the Select Committee the right to disclose publicly the most sensitive operational information provided to the committee in contravention of statutory provisions which direct the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. At a minimum it would appear that such a decision by one branch of Government would be exercised only through the joint action of both Houses

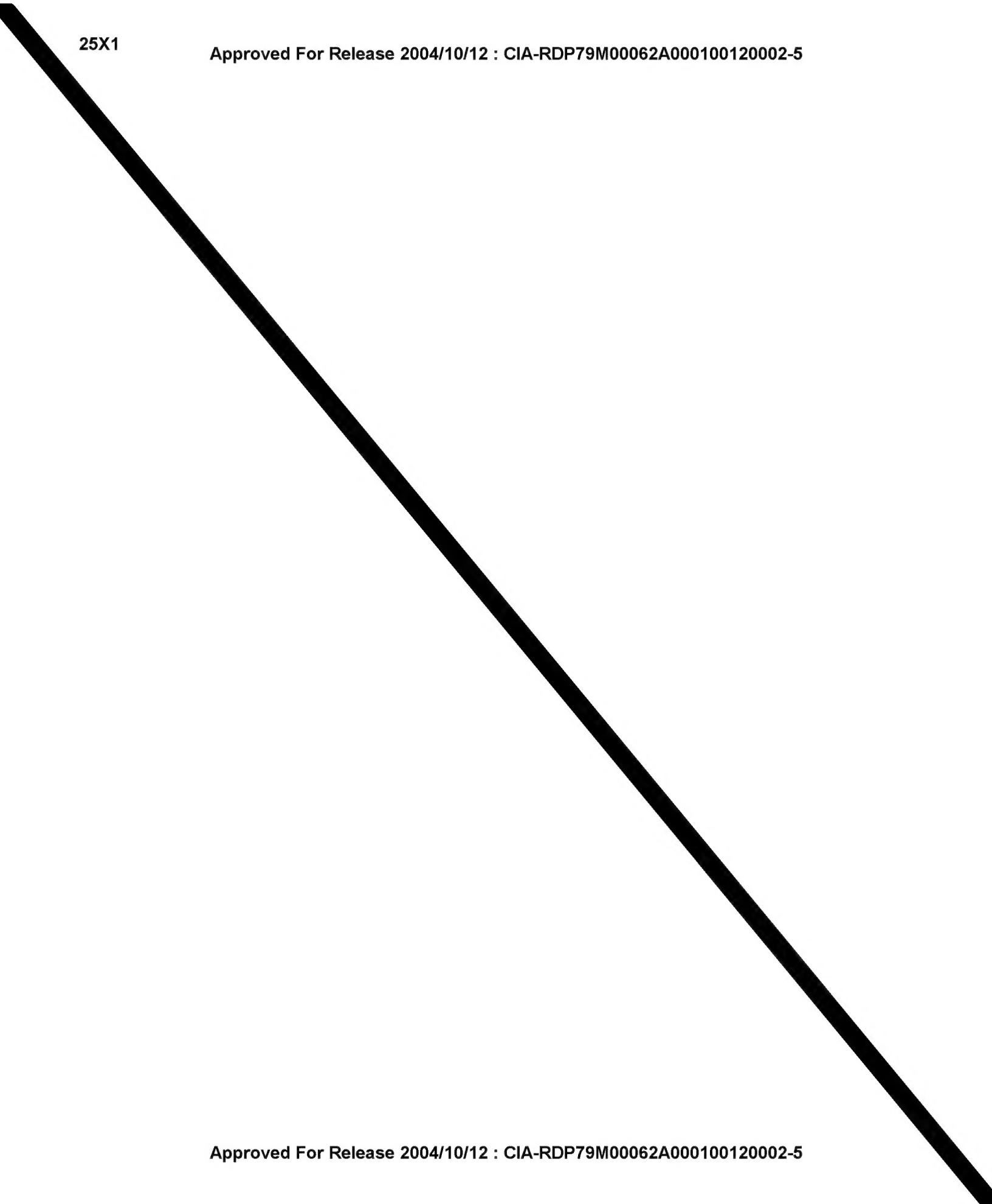
but preferably should be a matter for resolution by the third branch of Government in the event of a dispute between the Executive and Legislative Branches.

f. Under Section 4 of the Resolution, the Committee is authorized to call to the attention of any other committee of the Senate any matter which the committee determines requires such attention. Such a procedure runs counter to the need for concentrated oversight in the interest of enhancing the prospects of protecting truly vital foreign intelligence secrets

g. In light of the analysis of the Resolution in the previous paragraphs, it is clear beyond a doubt that the Resolution perpetuates and fosters extensive proliferation of truly vital intelligence secrets among an almost unlimited number of Senate committees, their members and their staff. As a consequence, whatever security rules and oaths are deemed appropriate for the proposed committee should be likewise extended to apply to these other committees, which presumably can only be accomplished by an amendment to the Rules of the Senate.

Fractionation of Oversight - The National Security Act of 1947 places on the Director of Central Intelligence the responsibility for correlating and evaluating intelligence relating to the national security and providing for appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities. It also places other responsibilities on the Director for performing "services of common concern... and other functions and duties related to intelligence affecting the national security as the National Security Council may... direct." Since 1961 succeeding Presidents of the United States have attempted to strengthen and reinforce these responsibilities of the Director within what has come to be known as the "intelligence community." The most recent of these directives was issued by President Ford in Executive Order 11905, on 19 February 1976. That Order delineates the Director's responsibilities with respect to the intelligence community and establishes mechanisms such as the Committee on Foreign Intelligence and the Operations Advisory Group to assist the Director in the exercise of this responsibility. The lead proposal would tend to thwart these efforts to strengthen the Director's responsibilities with respect to the intelligence community by fractionating legislative oversight over the various departments and agencies which make up the intelligence community. The proposal asserts jurisdiction

over these agencies (enumerated in Section 3(a)(4) but also asserts duplicative jurisdiction on the part of other committees of the Senate on matters "otherwise within the jurisdiction of such committee(s)." Thus the proposal would establish concurrent jurisdiction over certain important elements of the intelligence community between the select committee and other Senate committees. Such an arrangement can only have an adverse affect on the capability of the DCI to effect central management throughout the foreign intelligence community.



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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

April 24, 1976

Honorable Howard W. Cannon, Chairman
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

It is my understanding that consideration is being given in the Rules Committee to amending S. Res. 400 to delete those provisions requiring annual authorizations and related legislative authority. While I am strongly in favor of eliminating the annual authorization requirement, the net result of the amended Resolution will be the creation of an additional standing committee to exercise general oversight of our foreign intelligence agencies. While the manner in which the Senate chooses to exercise oversight of intelligence agencies is for the Senate to determine, I feel compelled to express my concern regarding any plan which would broaden access to sensitive operational information.

During my 31 March testimony before the Committee, I stressed that the intelligence community, particularly CIA, has been confronted with a disturbing proliferation of congressional oversight responsibility. The Armed Services and Appropriations Committees have traditionally exercised oversight of CIA. During the 94th Congress, the Senate Foreign Relations and House International Relations Committees (pursuant to Section 662 of the Foreign Assistance Act) and the two select committees have been briefed on sensitive CIA operations. The Senate Budget Committee has recently established an intelligence unit and begun requesting access to sensitive information. In addition, 11 other congressional committees and subcommittees have requested access to sensitive Agency operational information during the past year. With this background, you will understand my reluctance to have still another committee added to the rolls of those with some oversight responsibility.

I share the President's view stated in his 18 February message to Congress that the nation's foreign intelligence effort would be best served by centralizing the responsibility for oversight of our foreign intelligence community. As the President stated, "The more committees and subcommittees dealing with highly sensitive secrets, the greater the risks of disclosure." Such concentrated jurisdiction would give one committee an overall, rather than parochial, view of the intelligence community.

Mr. Chairman, it is not my wish or intent to limit Congress' access to substantive intelligence on foreign developments. I want Congress to be a consumer of intelligence. However, I believe the trend toward wide proliferation of information on Agency operations must be reversed, rather than fueled, if Congress and the Executive branch are to work together constructively in the intelligence field, and if sensitive operational information is to be reasonably protected from unauthorized disclosure.

Sincerely,

George Bush
Director

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25X1

MEMORANDUM FOR:

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25X1

Date 6/1/76

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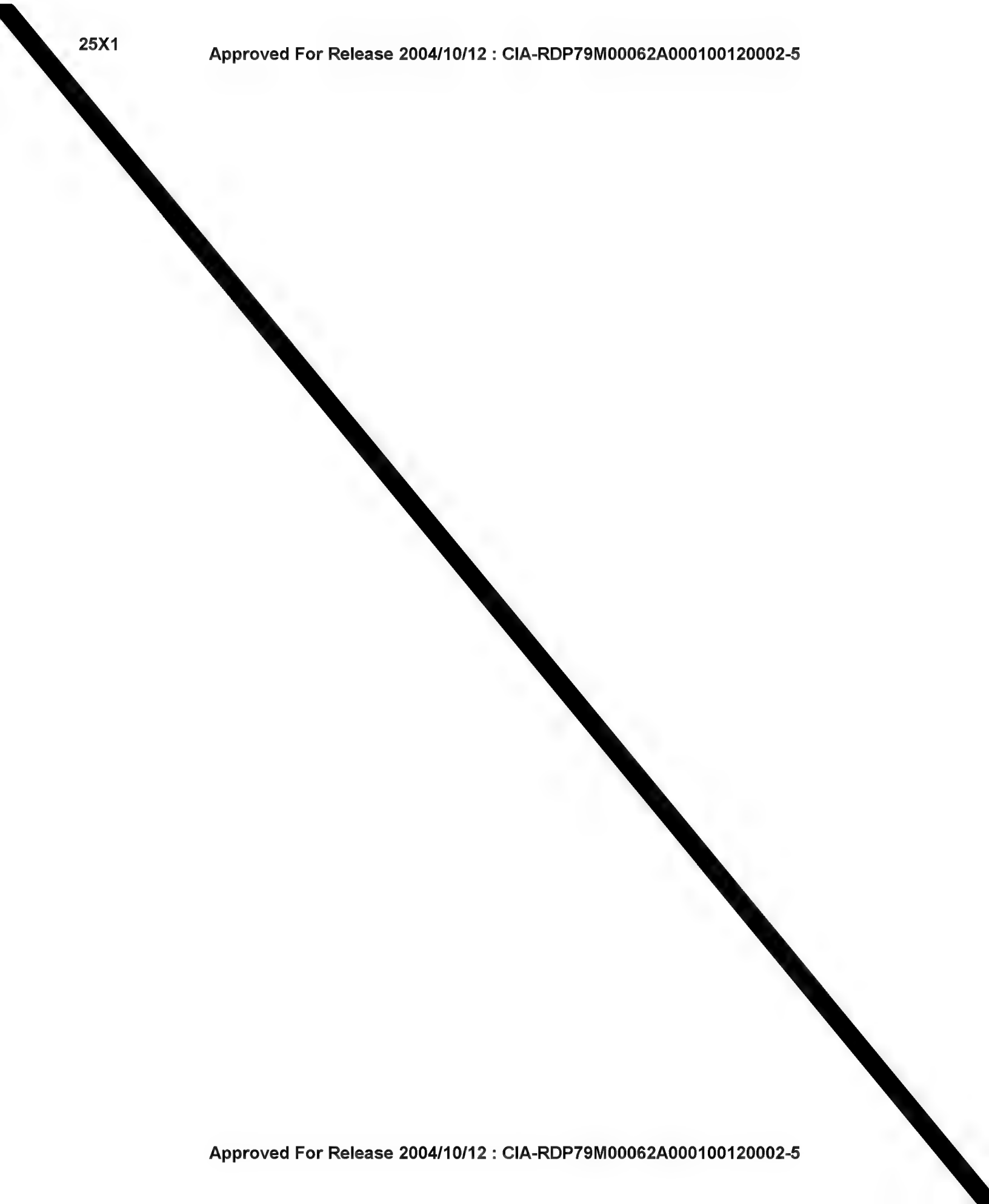

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Honorable John L. McClellan, Chairman
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Senate Select Committee recently voted to bring before the full Senate the question of whether to publicly release the budget totals of the intelligence agencies. I am writing to express my opposition to such disclosures. I agree fully with the President, who stated in an April 21 letter to Senator Church: "It is my belief that the net effect of such a disclosure could adversely affect our foreign intelligence efforts and therefore would not be in the public interest." Past Directors have taken this same position.

I believe the disclosure of intelligence budgets would provide adversaries with significant insight into the nature, scope, and direction of our national foreign intelligence programs, particularly were the figures to be released on an annual basis, as recommended by the Select Committee. Budget totals, when correlated with other information, will enable our adversaries to make more accurate conclusions about major Intelligence Community programs. This would aid them in thwarting our efforts to collect important information. The U.S. Government would benefit considerably from access to this same information regarding Soviet intelligence efforts.

In addition, once overall intelligence agency budget figures are made public, I believe it will be impossible to prevent the disclosure of budget details. Definitional questions about where "intelligence" expenditures stop and operational expenditures begin would lead to open discussion of sensitive intelligence programs and techniques. The history of the disclosure of the Atomic Energy Commission budget illustrates the futility of attempting to stop the disclosure at a single figure. Coverage of the AEC weapons budget evolved from a one-line entry in 1949 to a fifteen-page breakout of weapons program, operating costs, and weapons facilities project costs in 1974.

It has been suggested that withholding intelligence budget figures is unconstitutional. The Select Committee report argues that Article I, Section 9, Clause 7 of the Constitution requires that intelligence budgets be publicly revealed. This Clause reads:

"...There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President who would not confide in that of the Senate, and still less in that of a large popular assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest." (The Federalist)

7. Until recent times, Presidents have conducted their foreign intelligence responsibilities largely through the instrumentality of confidential agents. It was recognized at an early date that some form of secret funding had to be devised to guarantee the confidentiality of these intelligence operations. The Statement and Account Clause of the Constitution was not deemed an obstacle to this endeavor by its authors. In response to President Washington's first annual message, the Congress provided for the so-called "contingent fund." Therefore, almost from the foundation of the government under the Constitution there has been a fund which the President could account for "by making a certificate...of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the...sums therein expressed to have been expended." (Stat. at Large, I, 299.) This fund was used by successive Presidents for their foreign intelligence-gathering efforts. So general was the idea that this fund was designed for secrecy that it has often been called the "secret service fund," and indeed the element of secrecy entered into one of the first agencies of Washington's administration, the dispatch of David Humphreys to Lisbon in 1790.

8. Perhaps the most succinct statement concerning the purpose of the secret fund was made by John Forsyth during a Congressional debate in 1831 on a treaty between the United States and Turkey:

"The experience of the Confederation having shown the necessity of secret confidential agencies in foreign countries, very early in the progress of the Federal Government, a fund was set apart, to be expanded at the discretion of the President of the United States on his responsibility only, called the contingent fund of foreign intercourse....It was given for all purposes to which a secret service fund should or could be applied for the public benefit. For spies, if the gentlemen pleases; for persons sent publicly and secretly to search for important information, political, or commercial; ...for agents to feel the pulse of foreign Governments...." (Cong. Debates, 21 Cong. 2 Sess., VII, 295.)

[For a comprehensive survey of the use of confidential agents, especially intelligence-gathering agents, by successive Presidents from Washington to Franklin Roosevelt, and the provisions made for their secret funding, see Wriston, Executive Agents in American Foreign Relations 1929]

9. From time to time Presidents have had to protect the confidentiality of their foreign intelligence efforts and the funding processes which supported these efforts. In 1844, the Senate inquired of President Tyler concerning the activities in England of one Duff Green. The President delayed until the agent's mission was complete and replied to the Senate, declaring:

> "...[A]lthough the contingent fund for foreign intercourse has for all time been placed at the disposal of the President, to be expended for the purposes contemplated by the fund without any requisition upon him for a disclosure of the names of persons employed by him, the objects of their employment, or the amount paid to any particular person, and although such disclosures might in many cases disappoint the objects contemplated by the appropriation of that fund, yet in this particular instance I feel no desire to withhold the fact that Mr. Duff Green was employed by the Executive to collect such information, from private or other sources, as was deemed important to assist the Executive in undertaking a negotiation then contemplated, but afterwards abandoned." (Richardson, Messages and Papers, IV, 328.)

In another incident, the House of Representatives requested President Polk to furnish the House with an account of all payments made on the President's certificate from the contingent fund during certain preceding administrations. President Polk, in a carefully considered message of 20 April 1846 declined to furnish the data requested. The President stated:

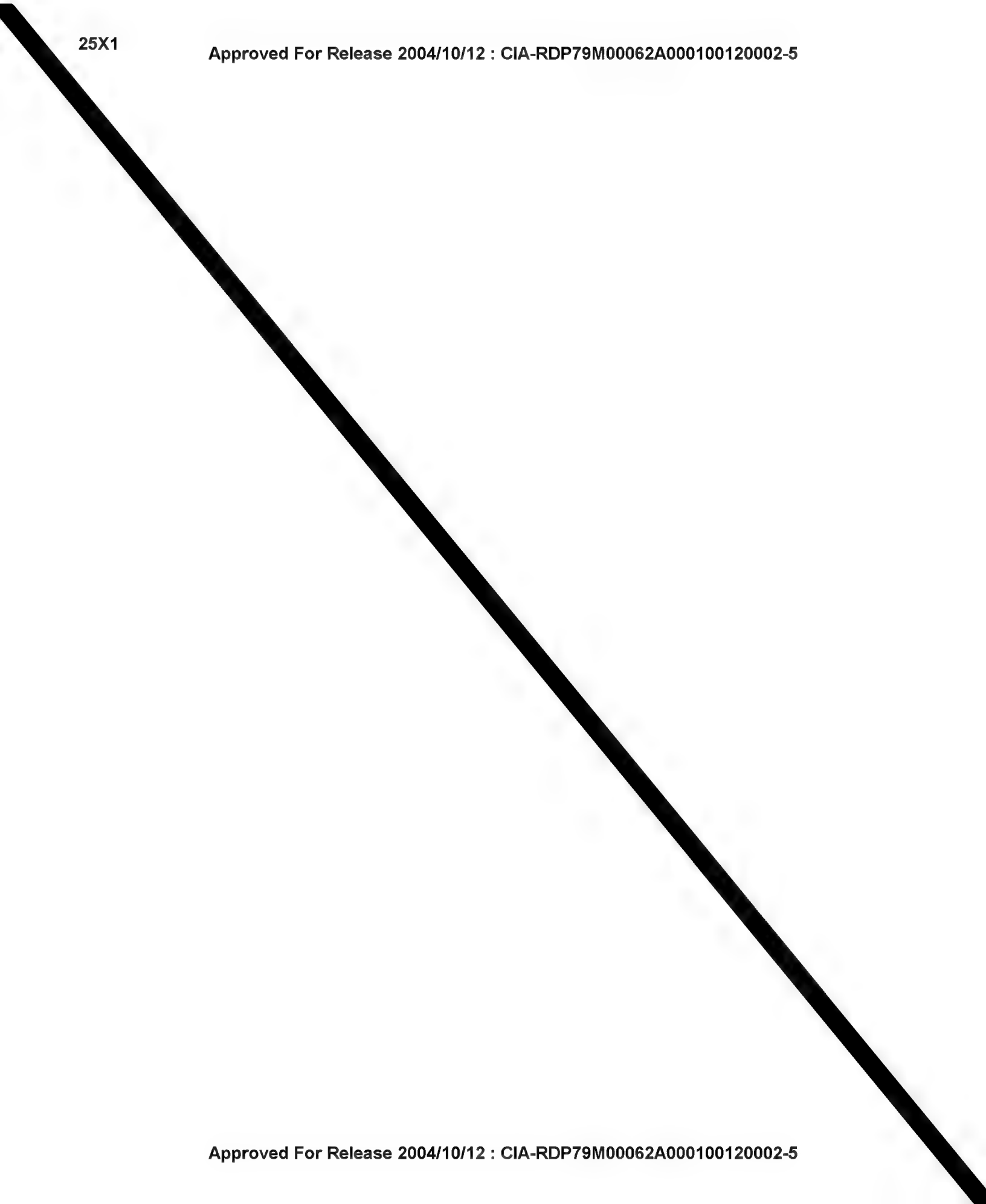
> "The expenditures of this confidential character, it is believed, were never before sought to be made public, and I should greatly apprehend the consequences of establishing a precedent which would render such disclosures hereafter inevitable." (emphasis added)

In other words, Polk was arguing that even the partial release of past figures relating to the contingent fund would lead inexorably to the erosion of the fund's secrecy. The same can be said today with respect to the funding of the nation's foreign intelligence programs.

10. President Polk continued, and his statement makes a good conclusion for this note:

> "The experience of every nation on earth has demonstrated that emergencies may arise in which it becomes absolutely necessary for the public safety or the public good to make expenditures the very object of which would be defeated by publicity....Some governments have very large amounts at their disposal, and have made vastly greater expenditures than the small amounts which have from time to time been accounted for on President's certificates. In no nation is the application of such sums ever made public. In time of war or impending danger the

situation of the country may make it necessary to employ individuals for the purpose of obtaining information or rendering other important services who could never be prevailed upon to act if they entertained the least apprehension that their names or their agency would in any contingency be divulged. So it may often become necessary to incur an expenditure for an object highly useful to the country; for example, the conclusion of a treaty with a barbarian power whose customs require on such occasions the use of presents. But this object might be altogether defeated by the intrigues of other powers if our purposes were to be made known by the exhibition of the original papers and vouchers to the accounting officers of the Treasury. It would be easy to specify other cases other cases (sic) which may occur in the history of a great nation, in its intercourse with other nations, wherein it might become absolutely necessary to incur expenditures for objects which could never be accomplished if it were suspected in advance that the items of expenditure and the agencies employed would be made public." 4 Richardson, Messages and Papers of Presidents, 431, 435 (April 20, 1846)



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Material Concerning the Need for Budget Secrecy

A. Letter from Director of Central Intelligence to Chairman, Senate Committee on Appropriations, dated 10 May 1976, on open intelligence budgets

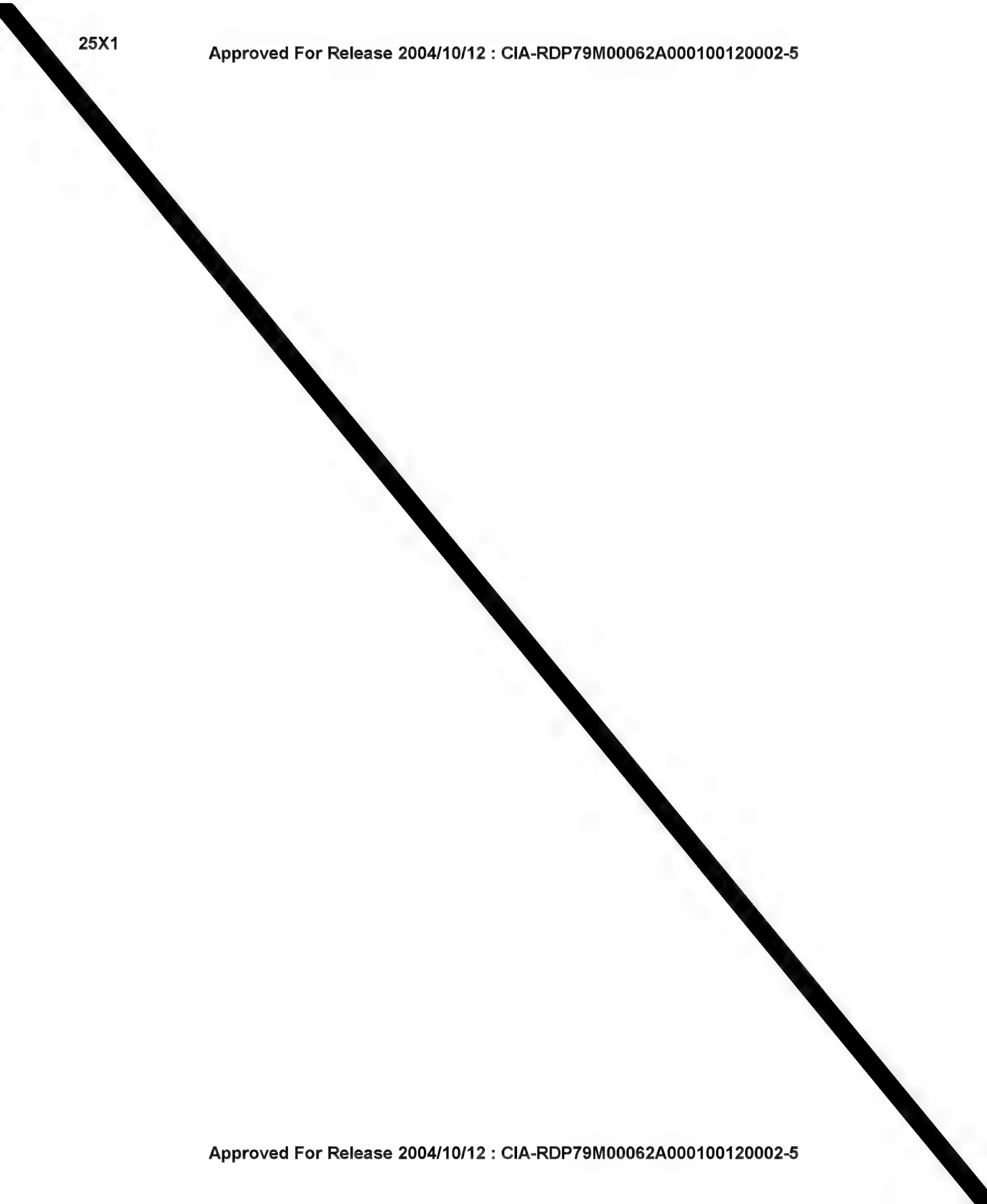
B. Letter from President Ford to Chairman, Senate Select Committee on Intelligence, dated 21 April 1976, concerning public release of intelligence budget figures

C. The Legal Basis for the Special Funding Authorities Established Under Title 50, Section 403f and 403j, in Furtherance of the Central Intelligence Agency Mission and Functions

D. Historical Note on the Secrecy of Foreign Intelligence-Gathering Activities and Their Confidential Funding

E. Material concerning intelligence budget secrecy from House Committee on Appropriations Report on Fiscal 1976 Department of Defense Appropriations Bill

F. Positions of past Directors Colby and Schlesinger



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The Legal Basis for the Special Funding Authorities Established Under Title 50, Sections 403f and 403j, in Furtherance of the Central Intelligence Agency Mission and Functions

1. The secrecy that is inherently necessary to insure the success of intelligence-gathering programs must be paralleled by secrecy in the funding of these programs. Without secrecy in funding there is no chance that the secrecy of the programs themselves can be maintained: knowing the direction and volume of money flow within the intelligence community can be every bit as revealing as knowing the commitment of manpower or hardware to a particular program. The Executive and the Legislative branches have carefully preserved and jointly controlled throughout our history the ability to make allocations of resources without revealing either the magnitude or the ends of the allocation. The use of these procedures has varied at different times, but the right to use them has never been extinguished. Congress sought to preserve budgetary secrecy in structuring our modern national intelligence efforts.

50 U.S.C. 403f states, through section (a), that:

> In the performance of its functions, the Central Intelligence Agency is authorized--
>
> (a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a - 403j of this title without regard to limitations of appropriations from which transferred.

This provision permits funds to be made available for CIA expenditure without having first been publicly identified either in part or in aggregate as CIA funds, as would be the case in the normal appropriation process.

> "No Money shall be drawn from the Treasury, but in Consequence of Appropriations, made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

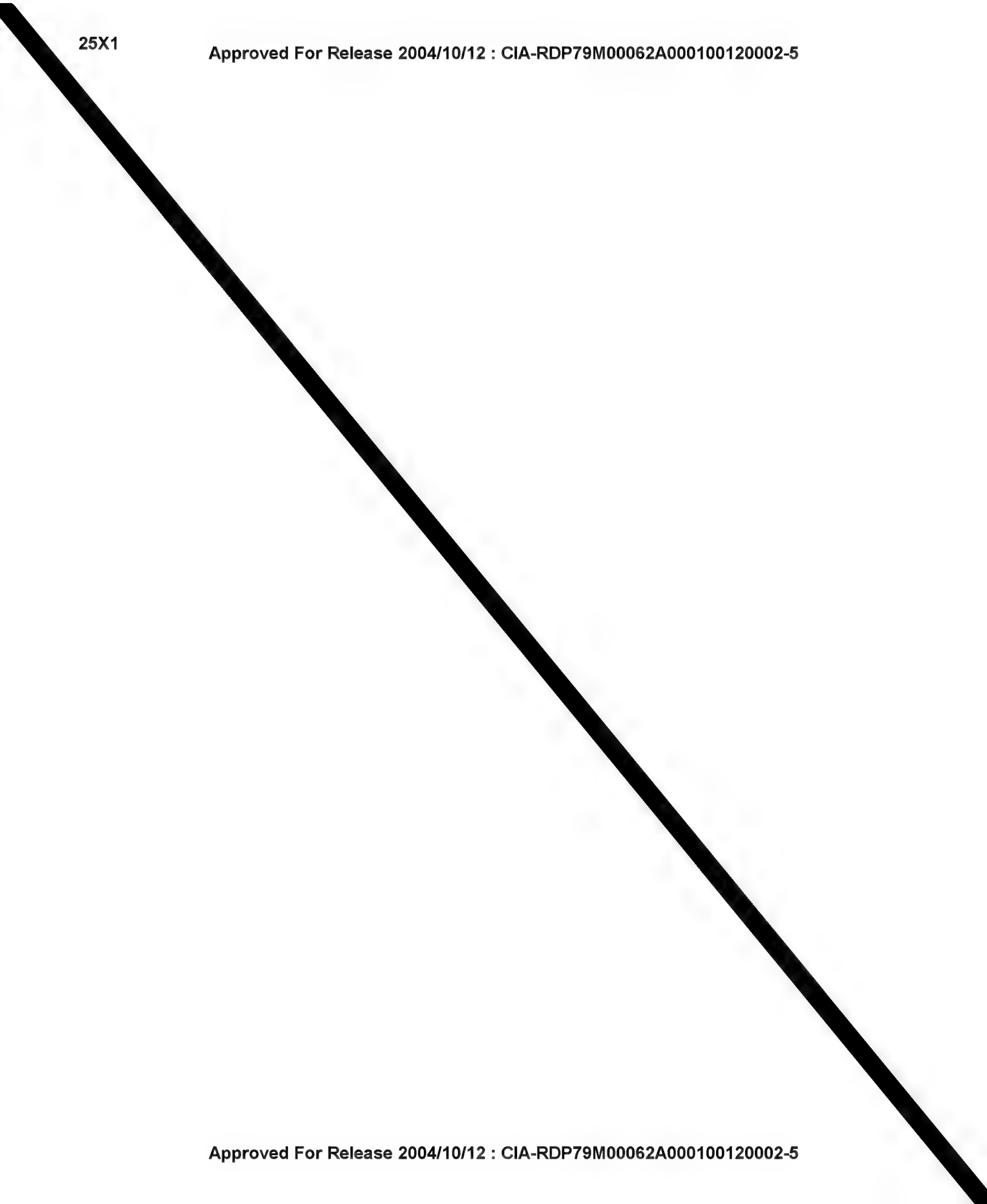
Of course, the constitutionality of the present practice can only be determined by a court, and no court has reached this question. I believe, however, that the present practice is in accord with the Constitution. I would note also that there is historical precedent for the secrecy of certain funds and that similar provision is made for special funds of other departments and agencies. Furthermore, it has been publicly stated in the Congress that all funds appropriated for CIA and intelligence activities of the Department of Defense are in the Defense Appropriations Act. In doing so, Congress has exercised its discretion to make public a total defense figure, which includes closely-related intelligence costs without releasing a separate intelligence figure.

Of even greater concern to me is the possibility that, in its consideration of the various proposals for future congressional oversight of intelligence agencies, the Senate might fragment budgetary authorization among several committees of the Congress. As you know, Section 8 of the Central Intelligence Agency Act of 1949 provided permanent budgetary authorization for the Central Intelligence Agency. Annual Authorization for the military intelligence organizations (which comprise approximately 85 percent of the total intelligence community budget) is under the jurisdiction of the Armed Services Committees. I do not believe a Senate resolution should be promulgated which would be contrary to the Central Intelligence Agency Act. In any event, I feel strongly that fragmentation of the intelligence community budget among several committees of the Congress would create confusion and would hamper, if not render impossible, the exercise of the responsibilities of the Director of Central Intelligence over the intelligence community in furtherance of statute and Executive Order 11905.

I urgently request your consideration of these matters in connection with the upcoming discussions of the Senate's oversight of the intelligence community.

Sincerely,

George Bush
Director



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Historical Note on the Secrecy of Foreign Intelligence-Gathering Activities and Their Confidential Funding

1. Intelligence gathering depends upon secrecy and confidentiality for success. General Washington stated this self-evident proposition in a letter to one of his intelligence officers, Elias Dayton, on 26 July 1777:

> "The necessity of procuring good Intelligence is apparent and need not be further urged---All that remains for me to add, is, that you keep the whole matter as secret as possible. For upon Secrecy, Success depends in most Enterprises of the kind, and for want of it, they are generally defeated....

The secrecy which must attend intelligence-gathering operations themselves must apply also to processes of funding these operations. This dual requirement for confidentiality and budgetary secrecy in intelligence matters was recognized and accommodated early in our nation's history.

2. The nation's first foreign intelligence efforts were conducted by a subordinate body of the Congress and it was this body which first wrestled with the problems of confidentiality and budgetary secrecy. In the early stages of the Revolution the Continental Congress exercised control over foreign affairs. On 29 November 1775, the Congress created the Committee of Secret Correspondence to "correspond with our friends in Great Britain, Ireland and other parts of the world," and Congress agreed "to defray all such expenses as may arise by carrying on such correspondence, and for the payment of such agents as they may send on this service." (Jol. Cont. Cong., III, 392.) In carrying out its foreign relations responsibilities, the Committee met its need for foreign intelligence information by secretly employing overseas agents. For example, one of the Committee's first acts was to write Arthur Lee, a well-connected American living in England. The Committee wrote (12 December 1775):

> "It would be agreeable to Congress to know the disposition of foreign powers toward us, and we hope this object will engage your attention. We need not hint that <u>great circumspection and impenetrable secrecy are necessary</u>. The Congress rely on your zeal and ability to serve them, and will readily compensate you for whatever trouble and expense compliance with their desire may occasion. We remit you for the present £200." (emphasis added) [Wharton, The Revolutionary Diplomatic Correspondence of the United States, II, 63-64 (1889)].

The Committee employed many such secret intelligence agents, including Charles Dumas, Silas Deane, Thomas Story and Jonathan Austin, and was able to obtain much useful information on foreign developments and attitudes from these sources.

3. Even though the Committee was a creature and subordinate of the Congress, it found itself in the position of insisting upon the secrecy and confidentiality of its operations as against Congress as a whole. Responsible as they were for conducting secret activities and protecting personal confidences, the Committee members recognized the elementary principle that the more widely a secret is held, the more poorly it is kept. The Committee's reluctance to disseminate sensitive information to Congress as a whole is all the more noteworthy in light of the strict injunction of secrecy under which Congress operated. (On 9 November 1775 the Continental Congress adopted the "Resolution of Secrecy" under which any member who disclosed a matter which the majority had determined should be kept secret was to be expelled "and deemed an enemy to the liberties of America.") On one occasion, for example, the Committee kept the contents of important despatches secret from Congress. Speaking of a despatch from Arthur Lee, the Committee said:

> "Considering the nature and importance of it, we agree in opinion, that it is our indispensable duty to keep it a secret, even from Congress.... We find, by fatal experience, the Congress consists of too many members to keep secrets." (emphasis added) (Force, American Archives, Fifth Series, II, 818.)

4. The Committee's insistence upon secrecy was not limited to the fruits of their intelligence activities but extended to operational matters as well. When on 10 May 1776 the Committee was called upon to "lay their proceedings before Congress," it was authorized to withhold "the names of persons they have employed or with whom they have corresponded." (Jol. Cont. Cong. IV, 345.) Finally, matters pertaining to the funding and instructions of intelligence agents were closely held by the Committee and were not subject to plenary review by the Congress. [See Wriston, Executive Agents in American Foreign Relations, 3-15, (1929)].

5. As a general rule, the subordinate bodies created by the Continental Congress had very little independent power. The exception to this was the Committee of Secret Correspondence which came to exercise broad powers in its foreign intelligence-gathering mission. The Committee's circumspection with its sensitive information is instructive today. It demonstrates that the principled, but practical, men who founded the Republic were willing to take those measures necessary to ensure the success of their foreign intelligence efforts, even where this meant controlling access to information within Congress itself.

6. With the adoption of the Constitution, the executive power passed to the President and with it the principal responsibility for the conduct of foreign relations. Commenting on this new distribution of power, John Jay, whose diplomatic experience in the service of Congress during the Revolution and the Confederation had given him insight into the weaknesses and requirements of American practice, discussed the problems of conducting secret foreign intelligence gathering:

THE WHITE HOUSE

WASHINGTON

April 21, 1976

Dear Mr. Chairman:

It is my understanding that the Select Committee expects to publish in its final report the budget figure for the Intelligence Community.

It is my belief that the net effect of such a disclosure could adversely affect our foreign intelligence efforts and therefore would not be in the public interest.

Over the past two years both Houses of Congress have voted by overwhelming margins against the disclosure of information concerning our foreign intelligence budget. I believe that these votes reflect the judgment of the Congress, which I also hold, that such disclosure over a period of time would reveal information helpful to our foreign adversaries.

Director of Central Intelligence George Bush has briefed your Committee on the harm to United States foreign intelligence agencies that could result from publication of this budget information. He is available for further discussion of this issue with the Committee members.

I urge the Committee to reconsider its position. In assuring that our foreign intelligence agencies are held accountable to the public, we must not undermine their

capability to provide the foreign intelligence needed by me and other elected and appointed officials in order to meet our constitutional responsibilities.

Sincerely,

Gerald R. Ford

The Honorable Frank Church
Chairman
Select Committee to Study
Governmental Operations with
Respect to Intelligence Activities
United States Senate
Washington, D. C. 20510

cc: The Honorable John Tower
Vice Chairman

Positions of Schlesinger and Colby

Former Director Schlesinger and present Director Colby are quoted as having stated they would have no objection to the publication of a total figure of the intelligence community budget. This statement takes out of context the specific statements made by Schlesinger and Colby.

Schlesinger

In his confirmation hearings as Secretary of Defense on 18 June 1973, Schlesinger clarified his position by saying, "I think that it might be an acceptable procedure, Senator, to indicate the total figure of the national intelligence programs. I would not personally advocate it, but it may be an acceptable procedure. I think, as you well know, that this has been discussed not only with the Armed Services Committees in the two Houses but also with the Appropriation Committees. There is the feeling that it might be wise to give the gross figure. I have come to share that feeling at least in this time frame but that does not say that it is not a possibility." "...I would lean against it. But I think that it could be done. The problem that you get into, you see, as you well know, Senator, is that it would be a freefloating figure, unsupported and unsupportable in public, with nobody except the members of the Oversight Committees or members of the Armed Services Committee and Appropriation Committees who would know the details. Those are circumstances which under certain conditions would ellicit the strong tendency for a flat 10 percent, 20 percent, 30 percent, 100 percent, cut in intelligence activities because there is an identifiable target with no broad understanding of what the components are and it is that aspect that concerns me."

Colby

In his confirmation hearings as Director of Central Intelligence on July 2, 20, and 25, 1973, Director Colby stated "While I believe that disclosure of the total figure of the intelligence community budget would not present a security problem at this time, it is likely to stimulate requests for additional detail. There is a danger to national security in the release or leakage of such detail; there is also a potential danger to national security in the revelation of trends of different details of the budget over several years even though any one year's figures would not present a major problem." (See also Director Colby's letter of 25 June 1975 to Chairman Mahon).

25 JUN 1975

Honorable George H. Mahon, Chairman
Subcommittee on Defense
Committee on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I understand the Committee is considering the possibility of providing some form of open appropriation for the Central Intelligence Agency.

I am strongly opposed to the public disclosure of the Central Intelligence Agency's budget or of a total budget figure for the intelligence community. While I recognize that, in the final analysis, this is a matter for determination by the Congress, I believe disclosure would do a disservice to our foreign intelligence efforts and therefore would not be in the national interest.

I am convinced that once an intelligence budget figure is made public, it will be impossible to prevent the disclosure of many sensitive and critically important intelligence programs and activities. Whether the published figure represents the Agency or intelligence community budget, whether it reveals intelligence budgets in whole or in part, I believe the ultimate effect would be the same.

Disclosure of intelligence budgets could provide potential adversaries with significant insight into the nature and scope of our national foreign intelligence effort, particularly where analysis of year-to-year fluctuations in the budget are possible. Publication of part of the intelligence budget would raise debate over what matters were included and what matters were not included in the published totals, leading to rapid erosion of the secrecy of the portions withheld. The same problems would result from the publication of the total Agency budget, a total Community budget, or any other figure covering "intelligence." An immediate requirement would be levied to explain precisely which of our intelligence activities were covered by the figure and which were not. Definitional questions over where "intelligence" expenditures stop and operational expenditures begin would necessarily lead to public discussion of sensitive intelligence programs and techniques.

Publication of intelligence budget figures would result in debate on changes or trends developed in succeeding year figures, and fluctuations in the figure would generate demands for explanations which in turn would reveal the component parts of the figure and the programs supported by it. The history of disclosure of Atomic Energy Commission budget materials and related information by both the Executive Branch and the Congress indicates that publication of any figure with respect to intelligence would quickly stimulate pressures for further disclosure and probes by various sectors into the nature of the figure and its component elements.

Attacks have been made on the constitutionality of the present financial processes for protecting our national foreign intelligence effort. I believe the present procedures are fully in accord with the Constitution. Agency appropriations are an integral part of appropriations made by law and are reflected in the Treasury's Statement and Account of Receipts and Expenditures in compliance with Article I, Section 9, clause 7 of the Constitution. Moreover, there is considerable historical precedent for budgetary secrecy, going back to debates in Constitutional Conventions and the use of a secret fund during the administrations of Washington and Madison, and a secret appropriations act in 1811. Congress most recently endorsed secrecy of intelligence budgets in June 1974 when the Senate rejected an amendment to the Department of Defense Appropriations Act of 1975 which would have required that the total budget figure for intelligence purposes be made public.

Sincerely,

SIGNED
W. E. Colby
Director

Funds can thus be transferred to CIA from portions of the defense budget after being placed there by Congress with the knowledge that they are actually CIA funds. By this means, Congress and the Executive retain tight control of intelligence expenditures and intelligence information. The report of the Senate Committee on Armed Services [S. Rept. No. 106, 81st Cong., 1st Sess., (1949)] on section 403f(a) states that it "provides for the annual financing of Agency operations without impairing security." The reference to "annual financing" indicates that the intent was to protect the aggregate figure from disclosure as well as individual transfers.

2. 50 U.S.C. 403j may be said to complement section 403f. While 403f protects from disclosure the flow of funds to the Agency, 403j protects Agency expenditures from disclosure. 50 U.S.C. 403j(b) provides that:

> The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

Congress has enacted similar provisions to operate in other situations where a compelling need for secrecy has been found. Thus, provision is made for secrecy in accounting for certain Federal Bureau of Investigation expenditures at 28 U.S.C. 107, for certain Department of the Navy expenditures at 31 U.S.C. 108, and for Atomic Energy Commission expenditure at 42 U.S.C. 2017(b). In the case of the Central Intelligence Agency, disclosure of the type of expenditure information protected by the provisions of 50 U.S.C. 403j would reveal the objects and purposes of covert programs, thereby rendering them futile. Knowledge that funds are being expended pursuant to a contract with a certain division of a corporation is enough to reveal the nature of the project to intelligence professionals, or at the very least to allow adversaries to target the most significant intelligence initiatives for further probing. For example, disclosure of the commitment of research and development funds to the most highly talented design section of a major aircraft manufacturer when other expenditures were being made with a manufacturer of sophisticated mapping cameras would have made the existence of the U-2 program an easy guess. Examples from recent years, as intelligence gathering becomes more technically sophisticated, are more numerous. The tracing of expenditures to individuals can be just as damaging. Disclosure of the fact that an individual has received money from CIA, either as a conduit for covert funding or in exchange for services rendered, will destroy the usefulness of that individual as a covert intelligence asset in the future, not to mention the threat to personal safety to those who have cooperated in the past. Also, disclosure of expenditure information would force the termination of certain highly advantageous intelligence liaison programs with foreign governments which would be embarrassed by revelation of cooperation with CIA.

3. The origin of the statutory and regulatory framework that controls the handling of United States Government funds can be traced to Article I., Section 9, Clause 7, the Statement and Account Clause, which states that:

> "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

This portion of the Constitution establishes the principle of maintaining accountability between the Executive and Legislative Branches throughout the process of appropriating and expending funds. And, of course, both branches remain accountable to the electorate. As would be expected, the procedures for fulfilling the obligation of maintaining accountability are not set out in the Constitution, leaving room for variation in the method and level of accountability to be required under different circumstances. Logic would indicate that the constitutional requirement of maintaining accountability cannot be read as being absolute, in the sense that a record of every expenditure must be made generally available. Such a requirement, apart from the Herculean proportions of the task, would make any covert Government program impossible, and some secrecy in Government operation has existed, necessarily, from the earliest days of the Republic. However, evidence that this portion of the Constitution is not to be read in impossibly rigid and absolutist terms can be found in the history of the clause itself. The history of the clause and the history of secrecy in Government operations subsequent to its adoption indicate that sufficient flexibility exists under the accountability requirements of the clause to encompass the special procedures reflected in 50 U.S.C. 403f and 403j.

4. The actual wording of the clause exists as evidence of the fact that the framers of the Constitution desired to leave room for legislative discretion and some secrecy in fulfilling the requirement for an accounting of receipts and expenditures. The Statement and Account Clause was not contained in the original draft of the Constitution. It was suggested from the floor during the final stages of the Constitutional Convention, when George Mason moved to require an annual account of public expenditures. James Madison proposed to amend this motion so that the envisioned reporting would take place "from time to time." This change was proposed in order to "leave enough to the discretion of the Legislature." Madison's amendment was adopted. 2 Farrand, The Records of the Federal Convention of 1787, p. 618-619 (1911). The debate between Mason and Madison was renewed in the Virginia ratifying convention in 1788. Mason opposed Madison's "from time to time" terminology because he viewed it as making provision for secrecy, and he felt there should be no room for secrecy. According to Farrand,

> The reasons urged in favor of this ambiguous expression, was, that there might be some matters which might require secrecy. In matters relative to military operations, and foreign negotiations, secrecy was necessary sometimes. But he [Mason] did not conceive that the receipts and expenditures of the public money ought ever to be concealed.*** But that this expression was so loose, it might be concealed forever from them***. 3 Farrand, supra, at 326.

Patrick Henry also recognized Madison's language as a provision enabling secrecy when required and opposed it for that reason. Henry feared that the adoption of Madison's language meant that:

> ***the national wealth is to be disposed of under the veil of secrecy; for [with] the publication from time to time *** they may conceal what they think requires secrecy.***
>
> 3 Elliot's Debates on the Federal Constitution, 462 (1836).

The debates indicate, therefore, that one of the reasons, besides allowing for administrative flexibility, for modifying Mason's original phrasing of the Statements and Accounts Clause was to permit secrecy in matters which required it. Even though Mason failed to conceive of circumstances under which expenditures ought to be concealed from the public, the language which Patrick Henry viewed as allowing Congress to "conceal what they may think requires secrecy" ultimately was adopted. It therefore seems clear that the framers contemplated that Congress would have the power to withhold certain appropriations and expenditure data from the public, at least temporarily. Madison, at least, was of the opinion that Congress should have such power to authorize secrecy in certain cases:

> The congressional proceedings are to be occasionally published, including all receipts and expenditures of public money, of which no part can be used, but in consequence of appropriations made by law. This is a security which we do not enjoy under the existing system. That part which authorizes the government to withhold from public knowledge what in their judgment may require secrecy, is imitated from the confederation***. [Farrand, supra, 312.]

5. To entertain for the moment a view opposite to the foregoing, that is, that Congress has no authority to make any appropriation or expenditure in secret, can be seen to result in a striking anomaly. The Statements and Accounts Clause, Article I, Section 9, Clause 7, does not in express terms authorize, but Article I, Section 5, Clause 3 does:

> Each House shall keep a Journal of its Proceedings, and from time to time publish the same, except such Parts as may in their Judgment require Secrecy.

It appears extremely unlikely that the framers would include in the Constitution an absolute obligation that every appropriation and expenditure be publicized, while explicitly authorizing each House to keep secret its debates and decisions on these very matters.

6. The history of congressional understanding of the Statement and Account Clause shows that it has not been interpreted as preventing Congress from deciding (as it has in enacting the Central Intelligence Agency Act) that certain classes of Federal expenditures should not be disclosed where delicate questions of foreign policy or national security are involved. Not long after the Constitution was adopted, Washington declined to make public the amount of money expended by General St. Clair in furtherance of a mission in the territory of Florida. See, 10 Federal Bar Journal 109 (1949). Shortly after the Constitution was adopted, President Madison (who had proposed the more flexible language of the Statements and Account Clause) sent a confidential communication to Congress outlining his recommendation that he be authorized to take possession of parts of Spanish Florida. Congress then passed a Secret Appropriation Act, appropriating $100,000 for occupation and forbidding the publication of the appropriation law. See Miller, Secret Statutes of the United States, 4-5 (1918). The enactment was not made public until 1818 when the controversy over Florida had ended. And almost from the foundation of the Government under the Constitution there was a contingent fund (later denominated the Secret Fund), which was used by the President to finance the secret operations of the Government, including intelligence gathering. The legislation establishing the fund provided that the President might account for the same:

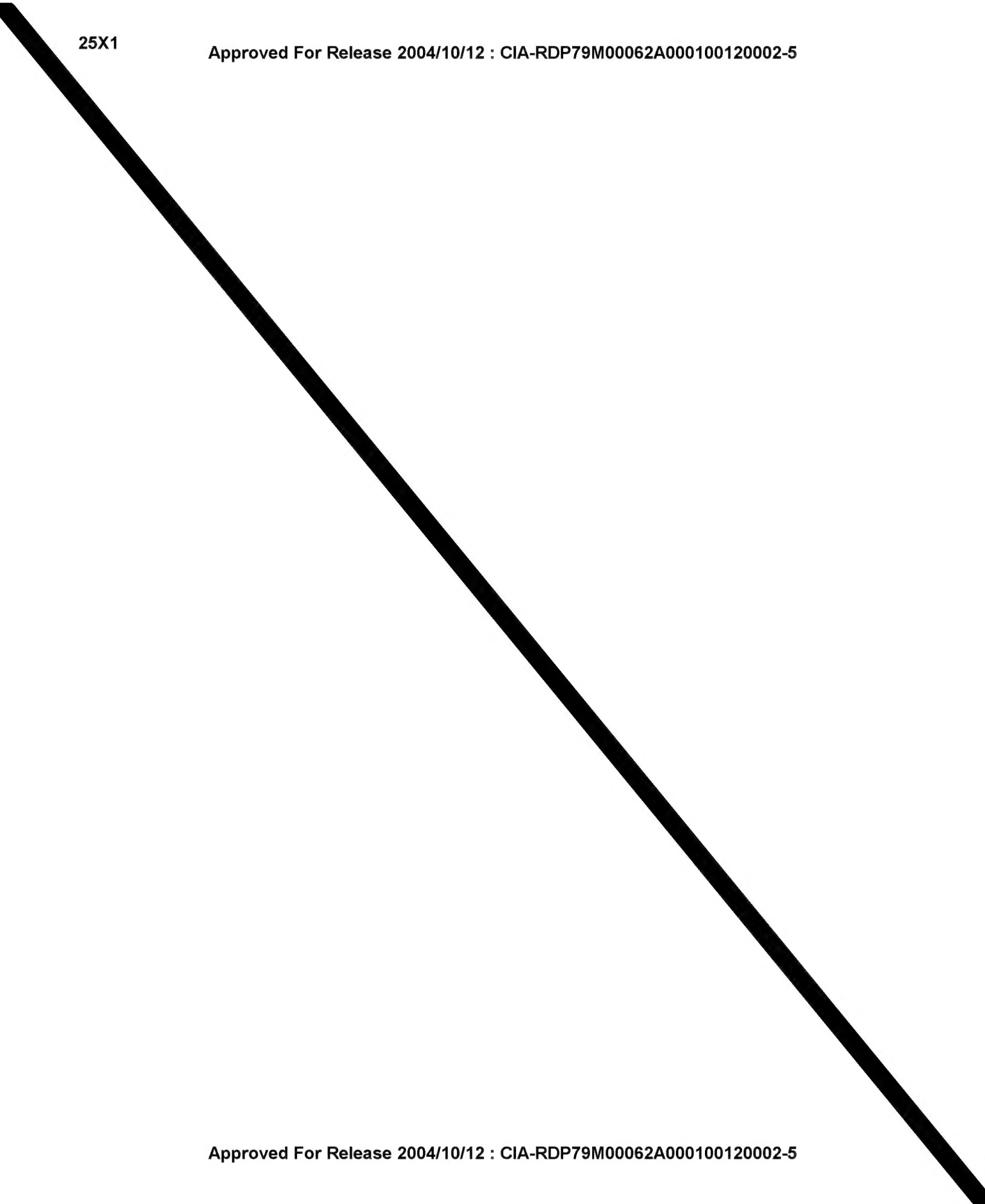
> ...By causing the same to be accounted for specifically in all instances wherein the expenditures thereof may in his judgment be made public, and by making a certificate ... of the amount of such expenditures as he may think advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sums therein expressed to have been expended. Act of February 9, 1793, 2 Annals of Cong. 1412, 1 Stat. 299.

The similarity of purpose and language between this early legislation and 50 U.S.C. 403j(b), set out above, is striking.

7. More recently, Congress has found secrecy to be in the national interest in several settings. For example, over $2 billion was secretly expended on the Manhattan project to develop the atomic bomb during World War II. Of the statutes set out above that make provision for a confidential, or restricted, accounting for the funds involved, that for the Atomic Energy Commission dates from 1946 and was amended in 1963, and that for the Federal Bureau of Investigation dates from 1950 and was added to in 1966. The provision for the Department of the Navy was enacted in 1916 and has not since been amended. The provision for the confidentiality of expenditures pursuant to foreign relations may be said to span all periods of our history as a nation since its first enactment in 1973. A comparison provision, now codified at 31 U.S.C. 1972, permitting delegation by the Secretary of State of certification authority, was contained in each Department of State Appropriations Act from 1947 to 1953.

8. Both Houses of Congress have within the past two years directly confronted the question of intelligence budget secrecy. The Senate in June 1974 rejected an amendment to the Fiscal 1975 Defense Authorization bill which would have required the disclosure of the intelligence community budget. The Senate vote was 55-33. The House of Representatives in October 1975 rejected an amendment to the Fiscal 1976 Defense Appropriation bill which would have disclosed the CIA budget. The House vote was 267-147.

9. It is clear that Congress is authorized to exercise considerable flexibility in establishing procedures by which the requirement for maintaining accountability between the Executive and Legislative Branches and to the people, as mandated by the Statements and Accounts Clause, is to be fulfilled. The origins of the clause itself and subsequent history indicate Congress is at liberty to adopt special procedures whereby certain appropriation and expenditure information is restricted to Congress and the Executive Branch. Present appropriation procedures for CIA reflect the fact that the secrecy required for the success of intelligence efforts must be matched with similar secrecy in the attendant financial processes.



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Extract of House Appropriations Committee Report on the Fiscal 1976 Defense Appropriations Bill Concerning Intelligence Budget Secrecy

BASIS FOR COMMITTEE DECISION NOT TO PUBLISH THE INTELLIGENCE COMMUNITY BUDGET

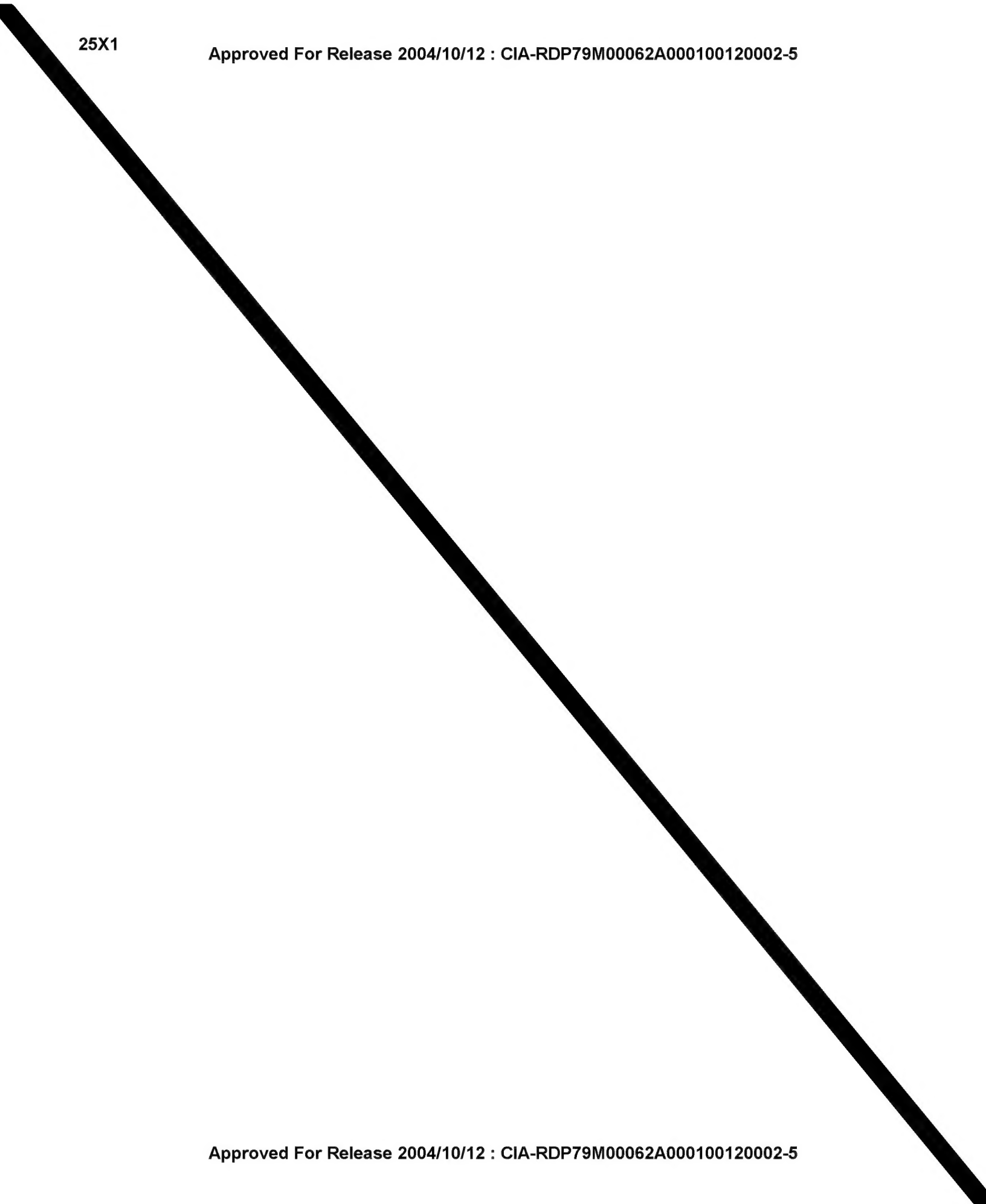
The Committee considered at length the desirability of publishing in some fashion the total budget figures for the intelligence community. It also considered separately the question of publishing just the Central Intelligence Agency budget total. The Committee decided that publication of the intelligence budget totals would be injurious to the security of the United States.

The Committee had the benefit of a very detailed legal brief which discusses the legality of maintaining a secret intelligence budget. The brief considers the debate of the Constitutional Convention and cites various examples of secretly funded activities throughout the history of the United States, beginning with George Washington and proceeding to the present day. After considering all of this constitutional, legal, and political history, the brief concludes that it is constitutionally permissible to continue the practice of not publicly disclosing the intelligence community budget.

Intelligence operations must remain secret in order to be successful. The disclosure of the budget and appropriation amounts related to intelligence functions or organizations might well lead to demands for the publication of ever-increasing data and could prove harmful to our intelligence efforts. The publication of even total budget amounts from year to year would give some indication of trends or emphasis in this area which would be helpful to the counterintelligence efforts of our potential opponents. The Committee is fully aware of the difficulties in supporting secret operations in an open society, but believes that adequate intelligence is an essential ingredient of national security and that the public disclosure of information about our intelligence efforts makes it less likely that adequate intelligence can be obtained.

ALL OF THE INTELLIGENCE COMMUNITY BUDGET IS IN THIS BILL

The Committee does believe that it can safely be revealed that all funds for the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency are included in the Department of Defense appropriations covered by this bill and report.



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